

STATE OF INDIANA)
) SS:
COUNTY OF ELKHART)

IN THE ELKHART CIRCUIT COURT
CAUSE NO. 20001 '03 U4 PL 242

STATE OF INDIANA,)
)
Plaintiff,)
)
v.)
)
MARK SCHOLL,)
individually and doing business as,)
MARK SCHOLL & SONS)
CONSTRUCTION)
)
Defendant.)

FILED
APR 29 2003
CLERK ELKHART CIRCUIT COURT

COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS, AND CIVIL PENALTIES

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code §24-5-0.5-1 *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code §24-5-11-1 *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code §24-5-0.5-4(c) and Ind. Code §24-5-11-14.

2. The Defendant, Mark Scholl individually and doing business as Mark Scholl & Sons Construction, at all times relevant to this complaint, was an individual engaged in the home improvement business, with a principle place of business at 58228 CR 23, Goshen, Indiana, 46526, and transacted business with Indiana consumers.

FACTS

3. Since at least May 2, 2001, the Defendant has entered into home improvement contracts with Indiana consumers.

4. On or around May 2, 2001, the Defendant entered into a contract with Michael & Connie Luce ("the Luces") of Goshen, Indiana, wherein the Defendant agreed to remove and replace shingles, siding and fascia at a price of Seven-Thousand Dollars (\$7,000.00), of which the Luces paid Four-Thousand Dollars (\$4,000.00) as a down payment. A true and accurate copy of the Defendant's contract with the Luces is attached and incorporated as Exhibit "A."

5. The Defendant failed to provide the consumers with a written home improvement contract that contained:

- a. the name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- b. the approximate starting and completion dates of the home improvements, and;
- c. signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature.

6. On or about June 20, 2001, the Defendant represented to the Luces that he would soon begin the work and that the work would be completed on July 9, 2001.

7. On or about June 29, 2001, the Defendant stated to the Luces that he would begin working on the Luces' home on July 9, 2001.

8. At contract signing, Defendant represented to the Luces that the work would be completed within a reasonable period of time.

9. The Defendant has yet to start and; therefore, has not completed any work under the home improvement contract.

COUNT I - VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT

10. The services described in paragraph 4 is a "home improvement" as defined by Ind. Code §24-5-11-3.

11. The transactions referred to in paragraph 4 is a "home improvement contract" as defined by Ind. Code §24-5-11-4.

12. The Defendant is a "supplier" as defined by Ind. Code §24-5-11-6.

13. By failing to provide the consumers with a completed home improvement contract, containing the information referred to in paragraph 5, the Defendant violated the Home Improvement Contracts Act, Ind. Code §24-5-11-10.

14. The Defendant's violations of the Indiana Home Improvement Contracts Act referred to in paragraph 5, constitute a deceptive act and subjects the Defendant to the remedies and penalties under Ind. Code §24-5-0.5-1, *et seq.*

COUNT II - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

15. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 14 above.

16. The transaction referred to in paragraph 4, is a "consumer transaction" as defined by Ind. Code §24-5-0.5-2(a)(1).

17. The Defendant is a "supplier" as defined by Ind. Code §24-5-0.5-2(a)(3).

18. The Defendant's representations to the Luces that the contracted work would be performed by the Defendant, as referred to in paragraph 4, when the Defendant knew or reasonably should have known that no such work would be performed, is a violation of Indiana Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-3(a)(1).

19. The Defendant's representation to the Luces that he would provide home improvement services to their homes within a stated period of time or a reasonable period of time, when he knew or reasonably should have known that he would not, as referred to in paragraphs 6, 7, and 8, is a violation of Ind. Code §24-5-0.5-3(a)(10).

**COUNT III – KNOWING AND INTENTIONAL VIOLATIONS
OF THE DECEPTIVE CONSUMER SALES ACT**

20. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 19 above.

21. The misrepresentations and deceptive acts set forth in paragraphs 4, 6, 7, and 8 were committed by the Defendant with the knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Mark Scholl, individually and doing business as Scholl & Sons Construction, enjoining the Defendant from the following:

a. in the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract, which includes at a minimum the following:

- (1) The name of the consumer and the address of the residential property that is the subject of the home improvement;

- (2) The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- (3) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- (4) A reasonably detailed description of the proposed home improvements;
- (5) If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- (6) The approximate starting and completion date of the home improvements;
- (7) A statement of any contingencies that would materially change the approximate completion date;
- (8) The home improvement contract price; ~~and~~
- (9) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature;

- b. in the course of entering into home improvement transactions, failing to agree unequivocally by written signature to all of the terms of a home improvement contract before the consumer signs the home improvement contract and before the consumer can be required to make any down payment;
- c. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer;
- d. representing, expressly or by implication, that the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have, which the Defendant knows or should reasonably know it does not have; and
- e. representing, expressly or by implication, that the Defendant is able to start or complete a home improvement within a stated period of time, or when no time period is stated, within a reasonable time, when the Defendant knows or should reasonably know he cannot;

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant, Mark Scholl, individually and doing business as Mike Scholl & Sons Construction, for the following relief:

- a. cancellation of the Defendant's contracts with the Luces, pursuant to Ind. Code §24-5-0.5-4(d);
- b. consumer restitution, in the amount of Four Thousand Dollars (\$4,000.00), for money unlawfully received from the Luces, pursuant to Ind. Code §24-5-0.5-4(c)(2);

c. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

d. On Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana;


e. On Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and

f. All other just and proper relief.

Respectfully submitted,

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By:


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